Carl H. Helmstetter
1000 Walnut Street, Suite 1400
Kansas City, MO 64106

July 11, 1996

Cynthia N. Kawakami, Esq.
Associate Regional Counsel
U.S. Environmental Protection Agency, Region 5
Mail Code: CM-29A
77 West Jackson Boulevard
Chicago, IL 60604-3590

Re: Conservation Chemical Company
of Illinois Site, Gary, Indiana

Dear Ms. Kawakami:

I have been requested by the companies on the attached list to transmit the following comments to you. Each of the companies is named by EPA as a PRP at the referenced site. This letter responds to the notice in the June 12, 1996 Federal Register (61 Fed. Reg. 29754) inviting comments on the proposed de minimis settlement, docket no. V-W-96-C-337.

The companies wish to make certain that previously-submitted comments are included in the administrative record with respect to the proposed settlement. Accordingly, I hereby reiterate and incorporate by reference the comments in Clif Lake's May 2, 1995 letter, a copy of which is attached for your convenience.

Sincerely,

Carl H. Helmstetter

CHH/jg
Enclosures

07/11/96
RHCH26:JHARRIN
89421-1

Companies Submitting Comments On
Proposed De Minimis Settlement
Docket No. V-W-96-C-337

Gary Steel Supply Co.

Bethlehem Steel Corporation

LaSalle Steel Company

AT&T/Lucent Technologies
(for Western Electric & Teletype)

Allied Signal, Inc.
(for Universal Oil Products)

K.A. Steel Chemicals, Inc.

UNOCAL Corporation
(for Union Oil Co. of California)

Chicago Steel & Pickling Company

Trent Tube Incorporated

American Chain & Cable Co., Inc.

Navistar
(for International Harvester)

McBRIDE BAKER & COLES
A Law Partnership Including Professional Corporations
500 West Madison Street, 40th Floor
Chicago, Illinois 60661-2511
312 715.5700 FAX 993.9350

Clifton A. Lake
715.5765

Lloyd M. McBride
1934-1983
Edward H. Baker, Jr.
1935-1970

May 2, 1995

By Messenger

Cynthia Kawakami, Esq.
Assistant Regional Counsel
United States Environmental Protection Agency
Region V
77 W. Jackson Blvd.
Chicago, IL 60604-3590
Attention: CS-29A

Re: *Conservation Chemical Company of Illinois, Inc. - CERCLA Matter - Gary, Indiana*

Dear Ms. Kawakami:

In response to your letter of March 28, 1995, which invited comment on USEPA's proposed Administrative Order by Consent (AOC), I am transmitting the initial comments of Interlake Steel Division of Gary Steel, Bethlehem Steel Corporation, AT&T (formerly Western Electric Company and Teletype Corporation), Union Oil Company of California, Chicago Steel & Pickling Company, and American Chain and Cable Company (the "Commenting Parties"). These comments also address USEPA's expressed intention to enter into a *de minimis* settlement.

I am, as you know, the Chairman of the 6500 Industrial Highway Group, the PRP Group which performed substantial remedial work at the site during 1987-1990. Presumably, that fact is the reason your March 28, 1995, letter soliciting PRP comments was addressed to me. Nevertheless, these comments should be considered as the several comments of the 6500 Industrial Highway Group members identified above, rather than comments made on behalf of the Group, because the Group has not thus far taken affirmative action to ratify its continuing existence. The Commenting Parties are also in the process of developing more detailed comments, which they expect to submit in the near future.

Initially, the Commenting Parties wish to address your advice to me during our recent telephone conversation that USEPA and the Justice Department have identified the CCCI site as one at which the government has decided to enter into a *de minimis* settlement with

an as yet indeterminate group of PRPs. We presume that the government intends to go forward using the volumetric "waste-in" information dated July 28, 1994, which was included with your initial information package. The Commenting Parties strongly believe that USEPA lacks sufficient information as to the eligible PRPs and the site remedy costs at this point to consider any form of *de minimis* settlement, and should refrain from doing so until it is more fully informed concerning the PRPs and their relationship to problems remaining at the site, so that it can identify which generator companies should be targeted for response cost liability during the next phase of remediation.

Our reasons for opposing any *de minimis* settlement at this time are as follows. First, the selected remedy, as set out in the draft AOC, is primarily driven by the presence of organic compounds and PCBs. See, generally, AOC, Paragraph III(8). The Commenting Parties, along with other members of the 6500 Industrial Highway PRP Group, were almost exclusively identified as alleged generators of acid and cyanide-bearing materials. The Work Plan which was developed by the 6500 Industrial Highway Group, approved by USEPA and implemented by the Group, was directed at removal of acid and cyanide materials. As a consequence of carrying out that Work Plan during 1987-1990, the environmental problems presented by the presence of the acid and cyanide materials at the site have been resolved. Even USEPA's draft AOC acknowledges that site conditions are now substantially different than they were, such that the thrust of the remedy is toward organic compounds and PCBs, not acids and cyanides. In contrast, USEPA's current "waste-in" information is based only upon undifferentiated waste volume originally sent to the site [without reflecting at all the substantial amounts of acid and cyanide materials removed during 1987-1990] in ranking generator responsibilities. Regardless of the quibbles which might be raised over the waste-in information, it is clear that the acid generators contributed by far the largest <u>volume</u> of materials to the site during CCCI's operation (spent pickle liquor was CCCI's principal raw material used in making ferric chloride which it sold as a wastewater treatment chemical). CCCI also accepted substantial amounts of cyanide-bearing wastes, but whether for disposal or other use, is unclear. When CCCI ceased operations, the close physical proximity of large volumes of acidic material and cyanide-containing materials in unstable and leaking tanks resulted in the potential for the unintentional mixing of acids and cyanides with serious adverse environmental consequences. This was the "imminent and substantial endangerment" condition to which the 1985 §106 Order was directed, and the Work Plan developed by the 6500 Industrial Highway Group was designed to eliminate this condition by removing and disposing of acids and cyanides off-site.

Now, however, it is virtually certain that generators of organics should be primarily responsible for the cost of the next phase of the remedy. If we understand correctly that USEPA intends to use the July, 1994 waste-in information to identify those generator PRPs who will be eligible for a *de minimis* settlement, *de minimis* settlement offers might erroneously be made to generators who are known to have sent relatively substantial amounts of organic wastes to the site. These organic materials, although lower in volume than the

acid and cyanide-bearing materials allegedly sent by the 6500 Industrial Highway Group members (which are now largely gone), will dictate the scope and cost of the next phase of the remedy. Section 122(g)(1)(a) of CERCLA, requires that before a *de minimis* settlement can be considered, there must be information in the administrative record which demonstrates that the amount of hazardous substances sent to the site by each potential *de minimis* settlor is minimal, and that the toxic or other hazardous effects of each *de minimis* settlors' contribution are likewise minimal in comparison to other hazardous substances "at the facility." For the reasons set out above, those persons who sent substantial quantities of organics to the site do not fall within the statutory definition of persons to whom a *de minimis* settlement may be offered. Conversely, some of those who sent acids and cyanides might properly be considered as candidates for a *de minimis* settlement, and should not be targets of the draft AOC. Regardless, it is clear that any contemplated *de minimis* settlement based upon an undifferentiated pre-1987 volumetric ranking (like USEPA's July 1994 waste-in list) cannot comply with §122(g)(1)(A) in light of the conditions which currently exist "at the [CCCI] facility."

In addition to inadequate information on the amount and hazardous effects of hazardous substances which are presently at the site, the cost of the remedy itself is unknown, and for this reason as well, a *de minimis* settlement is inappropriate. At the November 10, 1994, public meeting, Mr. Michael Gifford, USEPA's RPM for CCCI, acknowledged that a groundwater remedy may be required, but stated that USEPA has "no information" on the cost of a groundwater remedy, except that it would be in addition to the current remedial cost estimate. Under these circumstances, §122(g) of CERCLA and USEPA's own *de minimis* settlement guidance do not permit a *de minimis* settlement to go forward.

The changed circumstances at the CCCI site from those which existed in 1985 at the time of the first §106 Order, have yet another consequence for the next phase of remediation. Because USEPA's proposed remedy for the final phase of the CCCI clean-up is substantially driven by remedial activities directed at organics and PCBs, a reasonable basis now exists for alleged acid and cyanide generators to contend that future remediation costs are divisible, thus precluding joint and several liability under §107 of CERCLA. In short, the facts support the conclusion that acid and cyanide generators should not be responsible at all for the costs of remedying organic and PCB contamination which is largely the goal of the next phase of the remedy. Likewise, other proposed AOC respondents, like Union Oil Company of California, which sent only inorganic nickel sludges, should also be considered only minimally responsible, if at all. [As an aside, the Commenting Parties wish to note that the source of the substantial quantities of PCBs at the site is unknown. USEPA's July 1994 waste-in information identifies no PCB generator. Similarly, the Commenting Parties' waste-in information does not disclose any known PCB generators. Under these circumstances, the record is clear that none of the presently identified PRPs is liable for response costs attributable to the removal and off-site TSCA disposal of the roughly 5-6,000

cubic yard "PCB-lime" waste pile created by USEPA when it attempted unsuccessfully, to "treat" the PCB-oil contained in CCCI's largest storage tank.]

The Commenting Parties are unclear as to the basis for USEPA's contention that "the actual or threatened release of hazardous substances from the site may present an imminent and substantial endangerment to the public health welfare or the environment" (draft AOC ¶ IV(7)) within the meaning of CERCLA §106(a). Given the history of the remediation accomplished by the 6500 Industrial Highway Group at the site during 1987-1990, and the subsequent return of the site to USEPA control more than five years ago, the Commenting Parties believe that it would be difficult for USEPA to credibly argue, much less establish, that an actual "imminent and substantial endangerment" condition currently exits.

In light of both the history of clean-up work at the site, and USEPA's current contention that an imminent and substantial endangerment condition is present under existing site conditions, the Commenting Parties wish to remind USEPA that in June, 1990, the 6500 Industrial Highway Group and Bill Simes, the former USEPA OSC for the CCCI site, agreed in principle on the elements of the final phase of the remedy. That consensus contemplated demolition and disposal of all surface structures, excavation, chemical fixation and re-deposit of contaminated soils and sludges, an asphalt cap and post-remedial groundwater monitoring. The Commenting Parties believe that these elements reflect a remedy which is appropriate for protection of human health and the environment. The remedy proposed in the draft AOC far exceeds the scope of the previously discussed remedy, and to the extent that it does so, particularly in the area of potential groundwater remediation [the scope and cost of which is acknowledged to be unknown], the Commenting Parties believe that the proposed remedy is inappropriate and unnecessary.

As noted earlier, the Commenting Parties are in the process of developing more detailed comments to the proposed AOC, as well as on the appropriate basis upon which to assign remedial responsibility, which is substantially different from USEPA's July 28, 1994, waste-in list. They expect to be communicating this information to USEPA in the relatively near future, and are available to meet with USEPA at its convenience to address these issues further. The Commenting parties appreciate the opportunity to comment on USEPA's intentions concerning the site, and hope that this level of communication continues in the future.

Very truly yours,

Clifton A. Lake

CAL/pg